

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

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|-------------------|---|---------------------------|
| SAMMIE BOOKER-EL, |) | |
| |) | |
| Petitioner, |) | |
| |) | CAUSE NO. 3:14-CV-1869 JM |
| vs. |) | |
| |) | |
| SUPERINTENDENT, |) | |
| |) | |
| Respondent. |) | |

OPINION AND ORDER

Before the court is a habeas petition filed by Sammie L. Booker-El, a *pro se* prisoner, attempting to challenge his 2002 child molestation conviction in Madison County. (DE # 1.) In *Booker v. Superintendent*, 3:08-CV-271-JVB (N.D. Ind. filed June 4, 2008), Booker-El challenged the same conviction that he is challenging here. The court entered judgment denying his petition on February 3, 2010. (*Id.*, DE # 26.) Booker-El appealed, but the U.S. Court of Appeals for the Seventh Circuit denied his request for a certificate of appealability. (*Id.*, DE 46.)

Under the Anti-Terrorism and Effective Death Penalty Act ("AEDPA"), Booker-El cannot proceed with a new habeas petition challenging this same conviction unless he obtains prior authorization from the Circuit. 28 U.S.C. § 2244(b)(3). There is no indication from his filing that he has obtained such authorization. In fact, he states that he recently sought leave in the Circuit to pursue a successive petition, but his request was denied. (DE # 1 at 7.) Because this court lacks jurisdiction to hear an unauthorized

successive petition, the petition must be dismissed. *Burton v. Stewart*, 549 U.S. 147, 157 (2007); *Nunez v. United States*, 96 F.3d 990, 991 (7th Cir. 1996).

It bears noting that this is not Booker-El's first attempt to file an unauthorized successive petition. Just last month he filed another petition in this District challenging his 2002 child molestation conviction; his petition was dismissed for lack of jurisdiction, and he was instructed that he must obtain authorization from the Circuit to pursue a second petition challenging this conviction. *See Booker-El v. Superintendent*, No. 3:14-CV-1758-PPS (N.D. Ind. order dated Aug. 1, 2014). He did not heed this instruction, and instead returned with the present petition a month later without authorization from the Circuit. Booker-El purports to be bringing the petition under the "All Writs Act" rather than 28 U.S.C. § 2254, but because he is challenging a state conviction, he must comply with the requirements of AEDPA regardless of how he labels his filing. As the Circuit has explained:

Prisoners cannot avoid the AEDPA's rules by inventive captioning. . . . Call it a motion for a new trial, arrest of judgment, mandamus, prohibition, coram nobis, coram vobis, audita querela, certiorari, capias, habeas corpus, ejectment, quare impedit, bill of review, writ of error, or an application for a Get-Out-of-Jail Card; the name makes no difference. It is substance that controls.

Melton v. United States, 359 F.3d 855, 857 (7th Cir. 2004). In short, Booker-El cannot avoid the bar on successive petitions simply by changing the label on his filings.

Accordingly, Booker-El is cautioned that he cannot file a successive petition challenging his 2002 child molestation conviction—or any other filing that attacks the legality of his confinement pursuant to this conviction, however he chooses to caption

it – without prior authorization from the Seventh Circuit Court of Appeals. His failure to comply with this procedure in the future may subject him to sanctions, including monetary penalties and/or filing restrictions.

For these reasons, the petition (DE # 1) is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

Date: September 17, 2014

s/James T. Moody
JUDGE JAMES T. MOODY
UNITED STATES DISTRICT COURT